Supreme Court, U.S.
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No. 01-607

IN THE

Supreme Court of the United States

FRANCK DUJARDIN,

Petitioner,

v.

THE INTERNATIONAL BANK FOR RECONSTRUCTION & DEVELOPMENT AND INTERNATIONAL DEVELOPMENT ASSOCIATION,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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November 9, 2001

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QUESTION PRESENTED

Whether the court of appeals and district court correctly applied the well-established and properly stated rule of law governing statutory immunity under the International Organizations Immunities Act.

PARTIES TO THE PROCEEDING AND STATEMENT REQUIRED BY RULE 29.6

The only parties to this proceeding are listed in the caption. Pursuant to Rule 29.6 of the Rules of this Court, Respondents state that they have no parent corporations and that they have not issued publicly held stock.

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Respondents, the International Bank for Reconstruction and Development ("IBRD") and the International Development Association ("IDA"), respectfully request that this Court deny the petition for a writ of certiorari filed by Petitioner Franck Dujardin to review the decision of the United States Court of Appeals for the District of Columbia.

COUNTERSTATEMENT OF THE CASE

The IBRD and the IDA, collectively known as the World Bank, are international organizations granted immunity under the International Organizations Immunities Act ("IOIA"), 22

U.S.C. § 288a(b). Pet. App. 1-2.[1] Petitioner Franck Dujardin was a consultant for an agency of the Government of Zaire, which was one of the World Bank's borrowers. *Id.* at 10. Dujardin alleged that after he was terminated by his employer in 1992, his severance payment was not made. *Id.* at 11.

Petitioner Dujardin brought a *defamation* action in 1999 against the World Bank in U.S. District Court for the District of Columbia. Petitioner alleged that the World Bank defamed him by stating that the World Bank had no outstanding obligation regarding Dujardin's severance. Pet. App. 12-13. The district court granted the World Bank's motion to dismiss on the ground that the World Bank was immune from Dujardin's defamation claim under the IOIA. *Id.* at 3, 8.

Only a week after hearing argument in this case, the D.C. Circuit issued its unpublished opinion affirming the district court.[2] The court of appeals concluded that "appellees are immune from the appellant's defamation suit under the [IOIA]." Pet. App. 1. In reaching its conclusion, the court of appeals applied the legal standard set forth in *Atkinson* v. *Inter-American Development Bank*, 156 F.3d 1335, 1338 (D.C. Cir. 1998). Pet. App. 2-3.

Under the *Atkinson* standard, the Bank's statutorily granted immunity is not waived unless the "particular type of suit would *further* the Bank's objectives." *Atkinson*, 156 F.3d at 1338. If the suit does not further the Bank's objectives, "the Bank's immunity should be construed as *not waived*." *Id.*; see also *Mendaro* v. *World Bank*, 717 F.2d 610, 617-18 (D.C. Cir. 1983). The court of appeals concluded that because the World Bank's objectives would not be furthered by waiving

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[1] The World Bank is also granted immunity by its Articles of Agreement, which the United States accepted and which have the force of law under 22 U.S.C. § 286.

[2] The court of appeals denied Petitioner's motion to publish its opinion. Pet. App. 4.

its immunity for defamation claims, the Bank was immune from Petitioner's claim. Pet. App. 3.

ARGUMENT

The petition for certiorari should be denied. The petition involves no conflict among the circuits or with a state court of last resort. Rather, the court of appeals' decision simply applies the well-established and properly stated rule of law governing the statutorily granted immunities of international organizations. See *Atkinson* v. *Inter-American Dev. Bank*, 156 F.3d 1335, 1338 (D.C. Cir. 1998); *Mendaro* v. *World Bank*, 717 F.2d 610, 617-18 (D.C. Cir. 1983); see also *Tuck* v. *Pan Am. Health Org.*, 668 F.2d 547, 550 (D.C. Cir. 1981); *Broadbent* v. *Organization of Am. States*, 628 F.2d 27, 35-36 (D.C. Cir. 1980). Applying the established rule of law to the facts in this case, the court of appeals correctly concluded that the World Bank's immunity had not been waived as to defamation claims. The decision below raises no issue worthy of this Court's review.

Petitioner asserts that this Court should review the decision below because "responsible commercial partners of the Respondents may now wonder whether they will be in the next class of commercial partners that the Respondents might seek to carve out of their Waiver. This will create an uncertainty for the Respondents' commercial partners." Pet. 13-14.

The World Bank has operated for over 50 years without waiving its immunity for defamation suits. Both the district court and the court of appeals agreed that the Bank's objectives would not be furthered by waiving its immunity for defamation claims. Petitioner's argument that the World Bank faces "peril" in its relationships with commercial partners if it maintains its immunity from defamation suits, Pet. 13, defies decades of experience and common sense and thus provides no reason to grant certiorari in this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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